



### BACKGROUND

On May 8, 1997, Support Staff Association of Moultonborough, NEA-New Hampshire, filed a petition for certification of a thirty-nine member bargaining unit of instructional assistants. On May 23, 1997, the Moultonborough School District filed its exceptions to the petition objecting that the name chosen is inaccurate and overbroad and objecting to the proposed designation of NEA-New Hampshire as the exclusive bargaining agent for these support staff members alleging that NEA-New Hampshire represents the teachers' bargaining unit and that the teachers supervise instructional assistants. A hearing was held before the undersigned hearing officer on July 2, 1997, at which time the record was closed.

### FINDINGS OF FACT

1. The Moultonborough School District (District) employs teachers, instructional assistants and other personnel in the operation of two schools and so is a "public employer" within the meaning of RSA 273-A:1 X.
2. Support Staff Association (Association) of Moultonborough, NEA-New Hampshire, seeks to become the exclusive bargaining representative for a bargaining unit for instructional assistants to consist of the following: health associate (2), Title I (2), after school program (1), library media (3), special education (9) and classroom (21).
3. The Moultonborough Schools Staff Association/NEA-New Hampshire is the exclusive bargaining agent for the teachers who are employed by the Moultonborough School District.
4. The District revised the special education program in Moultonborough in school year 1992-1993 when the District adopted an inclusionary model which brought students with special needs into the classroom. In 1993, a new position was created: the special education consulting teacher (Association Exhibit No. 13). The District hired many instructional assistants to carry out this program. At Moultonborough Academy, the secondary school, students move from class to class and instructional assistants do also. At the Central School, the elementary school students are assigned to one classroom. Instructional assistants are less mobile but move according to students' needs. Instructional assistants are regular employees who are hired annually and are issued contracts by the superintendent

- and school board whether they are part-time or full-time. (Association Exhibits No. 3 and 4)
5. Special education and classroom instructional assistants are non-professionals who are directed by the special education consulting teacher and the classroom teacher. No distinction was made in testimony between special education and classroom instructional assistants, and both are supervised by consulting teachers according to the job description approved by the Moultonborough School Board on July 19, 1993. (District Exhibit No. 1). Superintendent Greenbaum stated that all these instructional assistants are hired under the above cited job description.
  6. Classroom teachers assign schedules to instructional assistants, direct their performance of tasks in assisting students in the general population and request participation of assistants in staff meetings regarding students receiving special education. There is no job description for the position of teacher. Classroom teachers and special education consulting teachers are positions encompassed by the teachers' bargaining unit, the Moultonborough School Staff Association, which is affiliated with the NEA.
  7. Special education consulting teachers do no classroom teaching at all. Special education consulting teachers carry a caseload of students, the needs of whom they oversee. The classroom and the consulting teachers share many of the supervisory duties relating to instructional assistants. In addition, the consulting teacher works with aides in carrying out students' Individual Education Plans (IEP) and oversees instructional assistants' staff development training plans. The consulting teacher reports to the Director of Personnel and Pupil Services who also is the Director of Special Education.
  8. Mary-Ellen Azem is a special education consulting teacher for pre school through grade 3. She manages the cases of thirty-five students working with eleven teachers and thirteen instructional assistants. She has daily contact with teachers and assistants. She had teachers fill out evaluation forms for classroom assistants and personally evaluated the one on one instructional assistants with whom she has the most contact.

9. Interviews for hiring instructional assistants are done by the Director of Special Education with a consulting teacher and classroom teacher usually participating. Evaluation of instructional assistants is done at least once a year by the classroom teacher and consulting teacher as a result of an ongoing observation process. The evaluation forms have been updated but the method of evaluation is long-standing. Written evaluation documents are signed by the assistant being evaluated, the classroom teacher, consulting teacher and an administrator, (District Exhibit No. 3). They are forwarded to the principal and superintendent and are used by the superintendent in determining whether an assistant should be extended an offer of employment for the upcoming year. Superintendent Greenbaum stated that their inclusionary system would not be possible if classroom and consulting teachers did not evaluate the large number of instructional assistants employed.
  
10. Library and media instructional assistants share hours under the direction of the school principal. Library assistant Edna Schroeder works after school hours. She testified that she had been evaluated three times in ten years and that the relationship shared with the librarian is collaborative in nature. Little testimony was received on the positions of health associate and the after school program assistant. The Title I assistant is directed by special education or consulting teachers and is supervised by the Title I project manager, Patricia Schaffer.

#### DECISION AND ORDER

RSA 273-A:8 II proscribes mingling in a single bargaining unit those who exercise significant supervisory authority with those whom they supervise. The New Hampshire Supreme Court has interpreted that to mean that a unit of supervisors may not choose the same union to represent it as those whom they supervise. Appeal of Manchester Board of School Committee, 129 N.H. 151 (1987)

Proposed bargaining units are reviewed on a case by case basis. There is much variety among school systems in special education program models employed. In the recent case, Inter-Lakes Education Support Personnel/NEA-New Hampshire, Decision No. 97-059, (June 20, 1997) special education aides reported to a member of the administrative staff and no significant supervision was performed by teachers in the NEA affiliated bargaining unit. The interests of the teachers and of the aides were unlikely to be in conflict such that would interfere with efficient operations of the schools. Appeal of

Manchester, supra at 154, citing Elk Grove Firefighters Local No. 2340 v. Willis, 400 F. Supp 1097 (1975) on a conflict regarding overtime.

The instant case is the unusual one. It is distinguished from Inter-Lakes since significant direct supervision is provided by the special education consulting teacher with input from the classroom teacher who directs the instructional assistant. Both the consulting teacher and the classroom teacher are bargaining unit positions included in the Moultonborough School Staff Association which is affiliated with NEA-NH. The prohibition of RSA 273-A:8 II applies to the special education instructional assistants, referred to in the petition for certification as special education and classroom assistants, though not to health, library media assistants, including the after school program assistant, and Title I assistants. That is not to say that special education instructional assistants cannot later form a bargaining unit. It is to say only that these assistants may not form a bargaining unit as now proposed in affiliation with the same union as that which already represents their supervisors. With the exclusion of the special education and classroom assistants, fewer than ten instructional assistant positions (health, library, after school program and Title I) are eligible for membership in the proposed bargaining unit and so none may be certified under this present petition. RSA 273-A:8 I. No further ruling is required.

So ordered.

Signed this 19th day of September, 1997.

  
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Gail Morrison  
Hearing Officer